IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.149 OF 2007

WITH

CIVIL APPLICATION NO.221 OF 2007

M/s.Advance Home Makers Group ...Appellant

Versus

Goma Shalik Ulvekar & Ors. ...Respondents

.....

Mr.P.R.Arjunwadkar for Appellant.

Mr.D.S.Sawant for Respondent No.1.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 7, 2007.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mr.Sawant waives notice for Respondent No.1, who is the contesting Respondent. None appears for Respondents 2 and 3 though served.

3. As short question is involved, Appeal is taken up for final disposal forthwith by consent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the Civil Judge, Senior Division dated 1st April 2006 below Exhibit 5 in Special Civil Suit No.169 of 2005. By the said order, the Trial Court has rejected prayer for interim relief made by the Appellant/Plaintiff during the pendency of the Suit. The only reason that has weighed with the Trial Court to answer the issue of prima facie case made out by the Appellant is that the plot in respect of which relief is claimed by the Plaintiff was itself not in existence on the date of execution of the agreement. No other reason is stated by the Trial Court to deny relief to the Appellant. There is substance in the argument of the Appellant that the said approach is misdirected.

5. It is well established position that a party to a contingent contract can always approach the Civil Court for appropriate relief in relation to such contract. This position is noticed by this Court in the order dated 13th April 2006 in Appeal from Order No.207 of 2006 in the case of *Javed*

Abdul Rehman Patel v. Smt.Mariambibi Ismail Patel & Anr. On this reasoning, the Appellant ought to succeed.

6. However, the next question is: whether the Appellant can succeed in its entirety in terms of the relief claimed in the Application Exhibit 5. In Application Exhibit 5 the relief is in respect of plot K.V. 16-B admeasuring 1115 square meters at Village Khidukpada, Roadpali. In the written statement filed before the Trial Court, the Respondent No.1 has clearly stated that before the execution of Agreement in favour of the Appellant, the Defendant No.1 had executed Agreement in favour of one Ramesh Babu Thakur in respect of the very plot admeasuring up to 1400 square meters. The total entitlement of the Appellant was only 2000 square meters. In other words, the Defendant No.1 can offer only up to 600 square meters of plot to the Appellant. In the light of this stand taken by the Defendant No.1, no doubt the correctness thereof will have to be decided at the trial, but at this stage, the Appellant would be entitled for protection only with regard to 600 square meters of

plot area. This is so because if any other relief was to be granted, that may affect the interest of third party Ramesh Babu Thakur who is not before the Court.

7. Accordingly, this Appeal partly succeeds. The impugned Judgment and Order is set-aside. Instead, the Application Exhibit 5 in Special Civil Suit No.169 of 2005 taken out by the Appellant/Plaintiff is partly allowed by injuncting the Respondent No.1/Defendant No.1 from dealing with the remainder of plot to the extent of 600 square meters other than the plot committed to Ramesh Babu Thakur as per the Agreement dated 15th May 2003.

8. It is made clear that it will be open to the Appellant/Plaintiff to apply to the Trial Court for suitable amendment of the Plaint and ask for further relief as may be advised. That Application will have to be considered on its own merits.

9. Appeal and the Civil Application disposed of accordingly.

A.M.KHANWILKAR, J.